



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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PLANNING DIVISION

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Case #: ZBA 2019-94
Site: 5 Lexington Avenue
Date of Decision: September 18, 2019
Decision: Approved with Conditions
Date Filed with City Clerk: October 16, 2019

ZONING BOARD OF APPEALS DECISION

Site: 5 Lexington Avenue

Applicant Name: Fan Wang & Marc Wagner
Applicant Address: 70 Lincoln Street, Apt. L215, Boston, MA 02111
Owner Name: same as above
Owner Address: same as above

Legal Notice: Applicants & Owners, Fan Wang & Marc Wagner, seek special permits under §4.4.1 of the SZO to alter a non-conforming property including constructing left elevation dormer. RA zone. Ward 5.

<u>Zoning District/Ward:</u>	RA Zone. Ward 5.
<u>Zoning Approval Sought:</u>	SZO §4.4.1
<u>Date of Application:</u>	August 2, 2019
<u>Date(s) of Public Hearing:</u>	September 18, 2019
<u>Date of Decision:</u>	September 18, 2019
<u>Vote:</u>	5-0

Case number ZBA 2019-94 was opened before the Zoning Board of Appeals in the Council Chambers of City Hall at 93 Highland Avenue. Notice of the Public Hearing was given to persons affected and was published and posted, all as required by M.G.L. c. 40A, sec. 11 and the Somerville Zoning Ordinance. On September 8, 2019, the Zoning Board of Appeals took a vote.



CITY HALL • 93 HIGHLAND AVENUE • SOMERVILLE, MASSACHUSETTS 02143
(617) 625-6600 EXT. 2500 • TTY: (617) 666-0001 • FAX: (617) 625-0722
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I. PROJECT DESCRIPTION

The Applicant proposes enlarging the left elevation dormer such that is 50% of the length of the roof plane to which it is attached. At 3.4 feet from the left property line, this dormer is already in violation of the setback. Therefore, a special permit is needed to extend this dormer.

II. FINDINGS FOR SPECIAL PERMIT (SZO §4.4.1):

In order to grant a special permit, the SPGA must make certain findings and determinations as outlined in §4.4.1 of the SZO. This section of the report goes through §4.4.1 in detail.

1. Information Supplied:

Staff finds that the information provided by the Applicant conforms to the requirements of §4.4.1 of the SZO and allows for a comprehensive analysis of the project with respect to the required Special Permits.

2. Compliance with Standards: *The Applicant must comply “with such criteria or standards as may be set forth in this Ordinance which refer to the granting of the requested special permit.”*

Section 4.4.1 states that “[l]awfully existing nonconforming structures other than one- and two-family dwellings may be enlarged, extended, renovated or altered only by special permit authorized by the SPGA in accordance with the procedures of Article 5. The SPGA must find that such extension, enlargement, renovation or alteration is not substantially more detrimental to the neighborhood than the existing nonconforming building. In making the finding that the enlargement, extension, renovation or alteration will not be substantially more detrimental, the SPGA may consider, without limitation, impacts upon the following: traffic volumes, traffic congestion, adequacy of municipal water supply and sewer capacity, noise, odor, scale, on-street parking, shading, visual effects and neighborhood character.”

The Applicant proposes to enlarge the existing shed dormer along the left elevation of the property. The dormer is proposed at 50% of the roof plane to which it is attached. The enlargement of the shed-style dormers on similar houses along Lexington Avenue is not uncommon. Stylistically, the dormer is not anticipated to be more detrimental to the site or area than the existing conditions. That said, the proposal does not necessarily “improve” the property or area. There is a significant amount of work going on within the structure that could potentially add rooms that can be used as bedrooms, though not increase the parking requirement. It strikes Staff that the Applicant has several deficiencies on the property that can use to be improved, specifically the amount of bituminous material on the site and the siding material. Staff has added conditions that will actually help improve both the site and the surrounding neighborhood as a result of these improvements.

3. Consistency with Purposes: *The Applicant has to ensure that the project “is consistent with (1) the general purposes of this Ordinance as set forth in Article 1, and (2) the purposes, provisions, and specific objectives applicable to the requested special permit which may be set forth elsewhere in this Ordinance, such as, but not limited to, those purposes at the beginning of the various Articles.”*

Staff finds that the proposal to construct the left elevation dormer is generally consistent with the purpose of the RA district which is to “...to establish and preserve quiet neighborhoods of one- and two-family



homes, free from other uses except those which are both compatible with and convenient to the residents of such districts.”

4. Site and Area Compatibility: *The Applicant has to ensure that the project “(i)s designed in a manner that is compatible with the characteristics of the built and unbuilt surrounding area, including land uses.”*

Most of the houses on Lexington Avenue present gambrel-form dormer on one roofline and a small shed dormer on the opposing roofline. A few properties along Lexington Avenue have enlarged their shed dormers.

In considering a special permit under §4.4.1 of the SZO, Staff finds that, as noted earlier in this report, the project, as conditioned, will not be substantially more detrimental to the site and area than the existing conditions.

5. Housing Impact: *Will not create adverse impacts on the stock of existing affordable housing.*

The proposal will not add to the existing stock of affordable housing.

6. SomerVision:

The proposal allows for a unit to create a bathroom on the third floor.

III. DECISION

Present and sitting were, Susan Fontano, Danielle Evans, Anne Brockelman, Elaine Severino, and Drew Kane. Upon making the above findings, Danielle Evans made a motion to approve the requested special permit. Elaine Severino seconded the motion. The Zoning Board of Appeals voted **5-0** to **APPROVE** the request **WITH CONDITIONS**. The following conditions were attached:

#	Condition	Timeframe for Compliance	Verified (initial)	Notes				
1	Approval is for the extension of a left elevation shed dormer to no more than 50% of the length of the roof plane to which it is attached.	BP/CO	ISD/PIng.					
	<table><tr><th>Date (Stamp Date)</th><th>Submission</th></tr><tr><td>August 2, 2019</td><td>Application submitted to City Clerk’s office.</td></tr></table>				Date (Stamp Date)	Submission	August 2, 2019	Application submitted to City Clerk’s office.
	Date (Stamp Date)				Submission			
August 2, 2019	Application submitted to City Clerk’s office.							
Any changes to the approved site plan or elevations that are not <i>de minimis</i> must receive SPGA approval. Whether or not a change is <i>de minimis</i> in nature must be determined by the Planning Office.								
Design								

2	The existing siding on the entirety of the house shall be removed. If the wood clapboards are still extant and in good shape, they shall be repaired where necessary and re-painted. If the wood clapboards are not extant or are uniformly in bad repair, wood or cementitious replacement siding are appropriate; vinyl siding will not be approved. All materials for siding and trim shall be submitted to planning staff through the Zoning Review Planner for review and approval.	BP / installation: CO	Planning staff/zoning review planner/ISD	
3	Any changes to the design, style, massing, form, elements, and materials of the shed dormers shall be submitted to and approved by Planning Staff (or, as necessary, the ZBA) prior to their execution on the building.	CO	Planning Staff / ISD	
Construction Impacts				
4	The Applicant shall, at his expense, replace any existing equipment (including, but not limited to street sign poles, signs, traffic signal poles, traffic signal equipment, wheel chair ramps, granite curbing, etc) and the entire sidewalk immediately abutting the subject property if damaged as a result of construction activity. All new sidewalks and driveways must be constructed to DPW standard.	CO	DPW	
5	All construction materials and equipment must be stored onsite. If occupancy of the street layout is required, such occupancy must be in conformance with the requirements of the Manual on Uniform Traffic Control Devices and the prior approval of the Traffic and Parking Department must be obtained.	During Construction	T&P	
Site				
6	The front fence shall be repaired and re-painted or it shall be replaced. If replaced, the front fence shall be no taller than 4' in height off sidewalk grade. Materials for fencing shall be submitted to planning staff through the Zoning Review Planner for review and approval. Vinyl and chain link shall not be allowed.	BP	Planning staff/zoning review planner/ISD	
7	The landscaping behind the front fence shall be upgraded. The trees and bushes shall be properly trimmed down and new perennial plantings shall be added in the area to the right of the front steps. A small landscaping plan for this area shall be submitted to planning staff through the Zoning Review Planner for review and approval.	BP/ installation: CO	Planning staff/zoning review planner/ISD	
8	All bituminous material shall be removed from the site. Pervious pavers shall be installed for the driveway and walkway. Landscaping shall be installed in the rear yard. A landscaping proposal for these areas shall be submitted to staff for review and approval. Location of mechanicals must be shown on this plan along with the location for trash & recycling storage.	BP/ installation: CO	Planning staff/zoning review planner/ISD	
Public Safety				
9	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP	
10	All smoke detectors shall be hard-wired.	CO	Fire Prevention / ISD	



11	Per Somerville Ordinances, no grills, barbeques, chimineas or similar shall be allowed on any porches, decks, balconies or the like. These restrictions shall be written into any condo docs and/or rental agreements, proof of which shall be shown to the City prior to the issuance of a Certificate of Occupancy.	CO/Perpetua l	FP/ISD	
Miscellaneous				
12	Occupancy of each of the two units shall not exceed four un-related persons per unit.	Perpetual	ISD	
13	The basement shall not become living space in any fashion except through the future permission of the ZBA.	Perpetual	ISD	
14	Granting of the applied for use or alteration does not include the provision for short term rental uses, such as AirBnB, VRBO, or the like. Separate approvals are needed for the aforementioned uses.	Ongoing	ISD / Plng.	
Final Sign-Off				
15	The Applicant shall contact Planning Staff at least five working days in advance of a request for a final inspection by Inspectional Services to ensure the proposal was constructed in accordance with the plans and information submitted and the conditions attached to this approval.	Final sign off	Plng.	

Attest, by the Zoning Board of Appeals:

Susan Fontano, *Chair*
Danielle Evans, *Clerk*
Anne Brockelman
Elaine Severino
Drew Kane (Alt.)

Attest, by Planner:

Alexander MelloCopies of this decision are filed in the Somerville City Clerk's office.
Copies of all plans referred to in this decision and a detailed record of the
SPGA proceedings are filed in the Somerville Planning Dept.**CLERK'S CERTIFICATE**

Any appeal of this decision must be filed within twenty days after the date this notice is filed in the Office of the City Clerk, and must be filed in accordance with M.G.L. c. 40A, sec. 17 and SZO sec. 3.2.10.

In accordance with M.G.L. c. 40 A, sec. 11, no variance shall take effect until a copy of the decision bearing the certification of the City Clerk that twenty days have elapsed after the decision has been filed in the Office of the City Clerk and no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied, is recorded in the Middlesex County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title.

Also in accordance with M.G.L. c. 40 A, sec. 11, a special permit shall not take effect until a copy of the decision bearing the certification of the City Clerk that twenty days have elapsed after the decision has been filed in the Office of the City Clerk and either that no appeal has been filed or the appeal has been filed within such time, is recorded in the Middlesex County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed Special Permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone.

The owner or applicant shall pay the fee for recording or registering. Furthermore, a permit from the Division of Inspectional Services shall be required in order to proceed with any project favorably decided upon by this decision, and upon request, the Applicant shall present evidence to the Building Official that this decision is properly recorded.

This is a true and correct copy of the decision filed on _____ in the Office of the City Clerk, and twenty days have elapsed, and

FOR VARIANCE(S) WITHIN

_____ there have been no appeals filed in the Office of the City Clerk, or
_____ any appeals that were filed have been finally dismissed or denied.

FOR SPECIAL PERMIT(S) WITHIN

_____ there have been no appeals filed in the Office of the City Clerk, or
_____ there has been an appeal filed.

Signed _____ City Clerk Date _____

